THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Michael Cunningham, Appellant,

v.

Anderson County, Respondent.

Appellate Case No. 2011-194209

Appeal From Anderson County
Alexander S. Macaulay, Circuit Court Judge

Opinion No. 5072
Heard November 14, 2012 – Filed January 16, 2013

AFFIRMED IN PART, REVERSED IN PART, AND REMANDED

John S. Nichols, of Bluestein, Nichols, Thompson & Delgado, LLC, of Columbia, and Brian P. Murphy, of Brian Murphy Law Firm, PC, of Greenville, for Appellant.

William W. Wilkins, E. Grantland Burns, and Kirsten E. Small, of Nexsen Pruet, LLC, of Greenville, for Respondent.

Michael E. Kozlarek and Ray E. Jones, of Parker Poe Adams & Bernstein, LLP, of Columbia, for Amicus Curiae South Carolina City and County Management Association.

GEATHERS, J.: In this breach of contract case, Appellant Michael Cunningham seeks review of the circuit court's order granting summary judgment to Respondent Anderson County (the County) on all of Cunningham's causes of action. Cunningham challenges the circuit court's conclusion that his employment contract with the County was void. Cunningham also challenges the circuit court's conclusions that (1) he could not avail himself of the public policy exception to the at-will employment doctrine, and (2) his accrued sick leave did not constitute "wages" under the South Carolina Payment of Wages Act.[1] We affirm in part, reverse in part, and remand.

FACTS/PROCEDURAL HISTORY

The County operates under a Council-Administrator form of government, in which the Council employs an administrator to serve as the administrative head of the County's government. The administrator is responsible for the administration of all departments over which the Council has control.[2] The Council's members are elected for two-year, non-staggered terms.[3] According to the County, three of the Council's seven members were defeated in the November 4, 2008 general election.[4]

During its November 18, 2008 meeting, the lame-duck Council (the 2008 Council) amended the previously-noticed agenda to vote on a severance contract with the then-current administrator, Joey Preston. This contract was drafted in anticipation of the termination of his employment. The 2008 Council voted 5-2 in favor of the contract.[5] During the same meeting, the 2008 Council voted 5-2 in favor of a "Master Employment Agreement" appointing Cunningham, then the assistant administrator, as the new administrator for a three-year term.[6] On November 19,

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[1] S.C. Code Ann. § 41-10-10 to -110 (Supp. 2011).

[2] *See* S.C. Code Ann. § 4-9-620 (1986) (describing office of the administrator).

[3] *See* S.C. Code Ann. § 4-9-610 (1986) (requiring council members to be elected in the general election for terms of two or four years "commencing on the first of January next following their election").

[4] The seven members were Michael Thompson, Bob Waldrep, Cindy Wilson, Larry Greer, Gracie Floyd, Bill McAbee, and Ron Wilson. Thompson, Greer, and McAbee were defeated in the November 2008 election.

[5] The five members voting in favor of the contract, which provided for a $1 million dollar payment to Preston, included the three "lame-duck" members.

[6] Likewise, the five members voting in favor of this contract included the three lame-duck members.

2008, Cunningham signed the contract, which provided for a severance package in the event he was later terminated "without cause."

On January 6, 2009, the new Council (2009 Council) met and passed a resolution condemning the 2008 Council's actions in entering into the severance contract with Joey Preston and the employment contract with Cunningham.[7] Subsequently, the 2009 Council's ad hoc personnel committee presented Cunningham with a written at-will employment contract based on the position of the 2009 Council that Cunningham's November 19, 2008 employment contract was no longer valid.[8] After reviewing the new contract, Cunningham wrote a letter to the members of the 2009 Council, dated January 27, 2009, stating that he saw no need to sign a contract for at-will employment as the 2009 Council already viewed his employment as at-will.

At its February 3, 2009 meeting, the 2009 Council voted to terminate Cunningham's employment, stating that he had rejected the 2009 Council's two separate proposals for an at-will employment contract.[9] Before the vote was taken, Cunningham reminded the 2009 Council that he had offered in his January 27, 2009 letter to continue to work under his "current conditions," referencing the 2009 Council's position that he was an at-will employee. Cunningham also indicated that he intended to request a public hearing on his termination.

On February 9, the ad hoc personnel committee met with Cunningham in executive session to discuss his employment. Cunningham offered to "enter into an agreement through the end of the term of the [2009] [C]ouncil." At Cunningham's request, the 2009 Council conducted a public hearing on March 2, 2009 concerning his termination. At the conclusion of the hearing, the 2009 Council once again voted to remove Cunningham from his position as Administrator.

Cunningham filed this action on April 22, 2009, asserting causes of action for Breach of Contract, Wrongful Discharge, and violation of the Payment of Wages Act. The parties engaged in discovery on the breach of contract claim but agreed

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[7] The members of the 2009 Council were Eddie Moore, Bob Waldrep, Cindy Wilson, Gracie Floyd, Tommy Dunn, Ron Wilson, and Tom Allen.

[8] This committee consisted of Bob Waldrep, Tommy Dunn, and Eddie Moore.

[9] The record does not indicate when the ad hoc personnel committee made the second proposal, which was for a demotion to the Assistant Administrator position, but with a higher salary than what Cunningham previously received in that position.

to postpone discovery on the wrongful discharge claim until after the contract claim had been resolved. Subsequently, Cunningham filed a motion for summary judgment as to the breach of contract claim. The County filed a cross-motion for summary judgment as to all three causes of action in Cunningham's complaint. Cunningham then filed a second motion for summary judgment as to his claim under the Payment of Wages Act. The circuit court denied Cunningham's summary judgment motions and granted the County's summary judgment motion.

In granting the County's summary judgment motion, the circuit court concluded that Cunningham's 2008 contract was void and could not bind the 2009 Council. The circuit court also concluded that Cunningham's claim for accrued sick leave was not compensable under the Payment of Wages Act because (1) the County did not have a policy of compensating its at-will employees for accrued sick leave upon their termination; (2) the provision for sick leave in Cunningham's contract was part of a void contract; and (3) the sick leave provision was part of the severance package set forth in the contract, and the Payment of Wages Act excludes severance from the definition of "wages." Finally, the circuit court concluded Cunningham could not avail himself of the public policy exception to the at-will employment doctrine in support of his wrongful discharge claim because he did not claim that he was an at-will employee. This appeal followed.

ISSUES ON APPEAL

1. Did the circuit court err in granting summary judgment to the County as to the breach of contract cause of action on the ground that Cunningham's employment contract was void?

2. Did the circuit court err in granting summary judgment to the County as to Cunningham's cause of action for violation of the South Carolina Payment of Wages Act on the ground that Cunningham's accrued sick leave did not constitute "wages" under the Act?

3. Did the circuit court err in granting summary judgment to the County as to Cunningham's wrongful discharge cause of action on the ground that Cunningham did not claim he was an at-will employee?

STANDARD OF REVIEW

This court reviews the grant of a summary judgment motion under the same standard applied by the trial court pursuant to Rule 56(c), SCRCP. *Jackson v.*

Bermuda Sands, Inc., 383 S.C. 11, 14 n.2, 677 S.E.2d 612, 614 n.2 (Ct. App. 2009). Rule 56(c), SCRCP, provides that summary judgment shall be granted when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." "At the summary judgment stage of litigation, the court does not weigh conflicting evidence with respect to a disputed material fact." *S.C. Prop. & Cas. Guar. Ass'n v. Yensen*, 345 S.C. 512, 518, 548 S.E.2d 880, 883 (Ct. App. 2001). Rather, "[t]he purpose of summary judgment is to expedite the disposition of cases not requiring the services of a fact finder." *Matsell v. Crowfield Plantation Comm. Servs. Ass'n, Inc.*, 393 S.C. 65, 70, 710 S.E.2d 90, 93 (Ct. App. 2011) (citing *George v. Fabri*, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001)).

An adverse party may not rely on the mere allegations in his pleadings to withstand a summary judgment motion, but must set forth specific facts showing there is a genuine issue for trial. *Strickland v. Madden*, 323 S.C. 63, 68, 448 S.E.2d 581, 584 (Ct. App. 1994). Nonetheless, "in cases applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment." *Hancock v. Mid-S. Mgmt. Co.*, 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009). "In determining whether any triable issues of fact exist, the evidence and all inferences which can be reasonably drawn from the evidence must be viewed in the light most favorable to the nonmoving party." *Id.* at 329-30, 673 S.E.2d at 802.

LAW/ANALYSIS

I. Breach of Contract

Cunningham asserts the circuit court erred in concluding that his employment contract was void. We disagree.

In *Piedmont Public Service District v. Cowart*, this court considered a twenty-year employment contract between a special purpose district and its administrator that required five years' severance pay. 319 S.C. 124, 459 S.E.2d 876 (Ct. App. 1995) (*Cowart I*), *aff'd*, 324 S.C. 239, 478 S.E.2d 836 (1996) (*Cowart II*). The court held that the contract involved the "governmental or legislative powers" of the District, and, therefore, could not be binding on successor boards. *Id.* at 133, 459 S.E.2d at 881. In applying the law of municipalities to the District, the court acknowledged that public service or special purpose districts are "not necessarily equivalent to municipalities or municipal corporations for all purposes." *Id.* at 131 n.2, 459

S.E.2d at 880 n.2 (citation omitted). However, the court noted "for the purpose of determining the scope of the District's power to enter into contracts, the law governing municipal corporations is applicable." *Id.* (citations omitted); *see also City of Beaufort v. Beaufort-Jasper Cnty. Water & Sewer Auth.*, 325 S.C. 174, 178-79, 480 S.E.2d 728, 731 (1997) (applying *Cowart I* to Beaufort–Jasper County Water and Sewer Authority, a special purpose district).

By logical extension, the law of municipalities would apply to Anderson County's actions in the present case. Notably, other jurisdictions have applied the prohibition against binding successor governing bodies to counties. *See Morin v. Foster*, 380 N.E.2d 217, 220 (N.Y. 1978) (recognizing that, but for a provision in a county's charter allowing for appointment of the county manager for a four-year term, the county's legislators would be unable to appoint the county manager for a term extending into the term of the legislators' successors); *accord Valvano v. Bd. of Chosen Freeholders of Union Cnty.*, 183 A.2d 450, 453 (N.J. Super. Ct. App. Div. 1962).

In addressing municipal contracts extending past the term of a governing body, the court in *Cowart I* set forth the following primer:

> If the term of the contract in question extends beyond the term of the governing members of the municipality entering into the contract, the validity of the contract is dependent on the subject matter of the contract. The general rule is that, if the contract involves the exercise of the municipal corporation's business or proprietary powers, the contract may extend beyond the term of the contracting body and is binding on successor bodies if, at the time the contract was entered into, it was fair and reasonable and necessary or advantageous to the municipality. However, *if the contract involves the legislative functions or governmental powers of the municipal corporation, the contract is not binding on successor boards or councils.*

Id. at 132, 459 S.E.2d at 880 (emphasis added). Quoting from *Newman v. McCullough*, 212 S.C. 17, 25-26, 46 S.E.2d 252, 256 (1948), which involved an employment contract with the City of Greenville, the court set forth the following rationale:

> [W]here the contract involved relates to governmental or legislative functions of the council, or involves a matter of discretion to be exercised by the council[,] *unless the statute conferring power to contract clearly authorizes the council to make a contract extending beyond its own term*, no power of the council to do so exists, since the power conferred upon municipal councils to exercise legislative or governmental functions is conferred to be exercised as often as may be found needful or politic, and the council presently holding such powers is vested with no discretion to circumscribe or limit or diminish their efficiency, but must transmit them unimpaired to their successors.

Id. at 132, 459 S.E.2d at 880-81 (emphasis added). The court distinguished between proprietary and governmental functions as follows:

> [T]he difference between proprietary and governmental functions is often difficult to determine, because, as the scope of "governmentality" expands, the intertwining and overlapping of such functions make it increasingly more difficult to draw any definitive line of separation. However, it is clear the rule is intended to protect the public by insuring that each governing body has available to it the powers necessary to effectively carry out its duties. Thus, when determining whether a contract is binding on successor boards, it appears that *the true test is whether the contract itself deprives a governing body, or its successor, of a discretion which public policy demands should be left unimpaired.*

Id. at 132-33, 459 S.E.2d at 881 (emphasis added) (citations omitted).

In *Cowart II*, our supreme court emphasized that the appointment or removal of a public officer "is a *governmental* function that cannot be impaired by an employment contract extending beyond the terms of the members of the local governing body." *Cowart II*, 324 S.C. at 241, 478 S.E.2d at 837 (emphasis added) (citation omitted). "Such a contract is not binding on the successors to the local

governing body." *Id.*[10] "[T]he rule is intended to ensure that governing bodies are free to discharge their governmental duties in the manner they deem appropriate and beneficial to the public they serve." *Cowart I*, 319 S.C. at 135, 459 S.E.2d at 882. An exception to this rule exists when "enabling legislation *clearly authorizes* the local governing body to make a contract extending beyond its members' own terms." *Cowart II*, 324 S.C. at 241, 478 S.E.2d at 838 (emphasis added).

Cunningham argues that *Cowart I* and *Cowart II* do not apply to this case because *Cowart I* applied the common-law principle known as Dillon's Rule, which our

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[10] Other jurisdictions also recognize this fundamental principle. *See Grassini v. DuPage Twp.*, 665 N.E.2d 860, 864 (Ill. App. 1996) ("[I]t is contrary to the effective administration of a political subdivision to allow elected officials to tie the hands of their successors with respect to decisions regarding the welfare of the subdivision."); *id.* ("This principle has not been confined in application to county governments . . . . Indeed, it has found expression with respect to employment decisions in . . . the Municipal Code . . . ." (citation omitted)); *City of Hazel Park v. Potter*, 426 N.W.2d 789, 793 (Mich. App. 1988) (holding that an employment contract between an outgoing city council and the city manager was void on public policy grounds because it attempted to take away "the governmental or legislative power of the incoming council to appoint and remove public officers"); *Morin v. Foster*, 380 N.E.2d 217, 220 (N.Y. 1978) ("[I]t is obvious that the appointment of a county manager is precisely and unmistakably a governmental matter within the rule's purview and the Monroe County legislators would be limited by it but for the fact that the county charter specifically provides for appointment of the manager to a four-year term."); *Lobolito, Inc. v. N. Pocono Sch. Dist.*, 755 A.2d 1287, 1289 (Pa. 2000) ("With respect to those agreements involving municipal or legislative bodies that encompass governmental functions, we have repeatedly held that governing bodies cannot bind their successors."); *id.* at 1289-90 ("The obvious purpose of the rule is *to permit a newly appointed governmental body to function freely on behalf of the public and in response to the governmental power or body politic by which it was appointed or elected* . . . ." (emphasis added)); *id.* at 1290 n.5 ("The rule against binding governmental successors is recognized in most other jurisdictions as well."); *Falls Twp. v. McManamon*, 537 A.2d 946, 948 (Pa. Cmmw. Ct. 1988) (holding that a three-year employment contract between the lame-duck supervisors of a township and the individual appointed by them to serve as police chief was invalid as against public policy because it was an attempt by the lame-duck supervisors to influence the governmental functions of their successors).

supreme court declared abolished by the Home Rule Act.[11] *See Williams v. Town of Hilton Head Island, S.C.*, 311 S.C. 417, 422, 429 S.E.2d 802, 805 (1993) ("This Court concludes that by enacting the Home Rule Act, . . . the legislature intended to abolish the application of Dillon's Rule in South Carolina and restore autonomy to local government."). Dillon's Rule states

> A municipal corporation possesses and can exercise the following powers, and no others: First, those granted in express words; Second, those necessarily or fairly implied in or incident to the powers expressly granted; third, those essential to the accomplishment of the declared objects and purposes of the corporation, not simply convenient, but indispensable.

The court in *Cowart I*, which post-dated the Home Rule Act, admittedly recited Dillon's rule at the beginning of its discussion of the contract's validity. 319 S.C. at 131, 459 S.E.2d at 880. However, the court did not ultimately rely on Dillon's rule in determining that Cowart's employment contract was void; in addition to relying on the contract's unreasonable duration, the court relied on the independent principle that governmental bodies have no authority to impair the power and discretion delegated to their successors by the public,[12] as aptly expressed in *Newman v. McCullough*:

> The power conferred upon municipal councils to exercise legislative or governmental functions is done so to be exercised as often as may be found needful or politic; and the council holding such powers is vested with no authority to circumscribe, limit or diminish their efficiency, but must transmit them unimpaired to their successors. *That acting as a governmental agency, it is bound always to act as trustee of the power delegated to it and may not surrender or restrict any portion of such power conferred upon it.*

212 S.C. at 25-26, 46 S.E.2d at 256 (emphasis added).

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[11] Codified at S.C. Code Ann. § 4-9-10 to -1230 (1986 & Supp. 2011).

[12] 319 S.C. at 132-36, 459 S.E.2d at 880-83.

As stated above, when determining whether a contract is binding on successor governing bodies, "the true test is whether the contract itself *deprives a governing body, or its successor, of a discretion which public policy demands should be left unimpaired.*" *Cowart I*, 319 S.C. at 133, 459 S.E.2d at 881 (emphasis added). This prohibition against limiting the powers of a successor council is consistent with the requirement of the Home Rule Act to construe the powers of a county in a liberal manner. Therefore, Cunningham's argument regarding the abolition of Dillon's Rule is irrelevant to our analysis.

Cunningham also argues that the County's enabling legislation, the Home Rule Act, clearly authorized the lame-duck council to enter into an employment contract extending beyond the outgoing members' terms of office. We disagree. Section 4-9-620 of the South Carolina Code (1986) states, in pertinent part, "The term of employment of the administrator shall be at the pleasure of the council and he shall be entitled to such compensation for his services as the council may determine. The council may, in its discretion, employ the administrator for a definite term." We do not view this language as clearly authorizing the "definite term" to extend beyond the terms of the outgoing council members.

Cunningham also maintains that the Act's requirement that the powers of a county be liberally construed authorized the 2008 Council to bind the 2009 Council. In support of this proposition, Cunningham cites S.C. Code Ann. § 4-9-25 (Supp. 2011), which states:

> All counties of the State, in addition to the powers conferred to their specific form of government, have authority to enact regulations, resolutions, and ordinances, *not inconsistent with the Constitution and general law of this State*, including the exercise of these powers in relation to health and order in counties or respecting any subject as appears to them necessary and proper for the security, general welfare, and convenience of counties or for preserving health, peace, order, and good government in them. *The powers of a county must be liberally construed in favor of the county* and the specific mention of particular powers may not be construed as limiting in any manner the general powers of counties.

S.C. Code Ann. § 4-9-25 (Supp. 2011) (emphasis added).

We do not view this provision as authorizing a county's lame-duck council to bind the successor council as to governmental functions. Cunningham's argument that the County's 2008 Council could bind the 2009 Council requires the court to take a narrow view of the 2009 Council's powers, which is contrary to the requirement that a county's powers must be given a liberal construction.

Cunningham argues in the alternative that the payment of severance under his employment contract would be a proprietary function rather than a governmental function, and, hence, the 2008 Council was permitted to bind the 2009 Council as to payment of his severance. *See Cowart I*, 319 S.C. at 132, 459 S.E.2d at 880 (holding that if the contract involves the exercise of the municipal corporation's business or proprietary powers, it is binding on successor bodies "if, at the time the contract was entered into, it was fair and reasonable and necessary or advantageous to the municipality"). Cunningham is making a distinction without a difference, and "'[w]hatever doesn't make a difference doesn't matter' in the law." *See McClurg v. Deaton*, 395 S.C. 85, 92, 716 S.E.2d 887, 890 (2011) (quoting *McCall v. Finley*, 294 S.C. 1, 4, 362 S.E.2d 26, 28 (Ct. App. 1987)). The payment of severance would be based on an employment contract that purports to bind the 2009 Council and is therefore void. *See Cowart II*, 324 S.C. at 241, 478 S.E.2d at 837 (holding that the appointment of a public officer is a governmental function that cannot be impaired by an employment contract extending beyond the terms of the members of the local governing body).

Based on the foregoing, the circuit court properly concluded that Cunningham's 2008 contract was void and could not bind the 2009 Council. Therefore, we affirm summary judgment for the County on this cause of action.

II. Payment of Wages Act

Cunningham asserts the circuit court erred in concluding that his accrued sick leave did not constitute "wages" under the Payment of Wages Act. Contrary to the circuit court's ruling, Cunningham argues that the Act's exclusion of "severance" from the definition of "wages" does not bar his claim for sick leave because his contract's provision for payment of accrued sick leave was not part of the severance package required by the contract.[13] *See* S.C. Code Ann. § 41-10-10(2)

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[13] The circuit court's ruling as to the exclusion of severance from the Act's definition of wages was an alternative ruling; the circuit court's primary ruling as to

(Supp. 2011) ("'Wages' means all amounts at which labor rendered is recompensed . . . and includes vacation, holiday, and sick leave payments *which are due to an employee under any employer policy or employment contract.*") (emphasis added).

This court may affirm for any ground appearing in the record on appeal. Rule 220(c), SCACR. Here, we need not determine whether sick leave was part of the contract's severance package because the sick leave claim is based solely on the proposition that the contract was valid and binding on the 2009 Council.[14] However, the contract was void. Further, Cunningham has admitted that he would not be entitled to sick leave from the County if his contract is determined to be void as the County did not have a policy of compensating its at-will employees for accrued sick leave upon their termination. Therefore, we affirm summary judgment for the County on this cause of action.

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the Payment of Wages claim was that Cunningham was not entitled to accrued sick leave "resulting from the termination of a void contract."

[14] Cunningham submits the alternative argument that the contract's provision for payment of accrued sick leave is severable from the remainder of the contract pursuant to the severability clause in section 17(D) of the contract, which states, in pertinent part:

> If any *provision*, or any portion thereof, contained in this Agreement is held to be unconstitutional, invalid, or unenforceable, in whole or in part, by any court of competent jurisdiction, the remainder of this Agreement or the portion thereof in question shall be deemed severable, shall not be affected thereby, and shall remain in full force and effect.

(emphasis added). The County maintains that this argument is not preserved because the circuit court did not rule on it and Cunningham did not file a Rule 59(e) motion seeking a ruling. Cunningham responds that because the trial court viewed the contract in its entirety as void, it would have been futile for him to seek a ruling on the severability argument. Assuming, without deciding, this precise issue is preserved for review, we reject Cunningham's argument. Because the circuit court correctly ruled that the contract was void in its entirety, no part of the contract is valid or enforceable against the 2009 Council.

III. Wrongful Discharge

Cunningham maintains the circuit court erred in concluding he could not avail himself of the public policy exception to the at-will employment doctrine on the ground that he did not claim he was an at-will employee. We agree.

> In South Carolina, employment at-will is presumed absent the creation of a specific contract of employment. An at-will employee may be terminated at any time for any reason or for no reason, with or without cause. Under the "public policy exception" to the at-will employment doctrine, however, an at-will employee has a cause of action in tort for wrongful termination where there is a retaliatory termination of the at-will employee in violation of a clear mandate of public policy. The public policy exception clearly applies in cases where either: (1) the employer requires the employee to violate the law, or (2) the reason for the employee's termination itself is a violation of criminal law.

Barron v. Labor Finders of S.C., 393 S.C. 609, 614, 713 S.E.2d 634, 636-37 (2011) (citations and quotation marks omitted). However, "the public policy exception is not limited to these situations." *Id.* at 614, 713 S.E.2d at 637.[15] Further, the existence of an employment contract does not preclude a determination that the employment is terminable at will. *See Cape v. Greenville*

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[15] "The public policy exception does not, however, extend to situations where the employee has an existing statutory remedy for wrongful termination." *Id.* at 615, 713 S.E.2d at 637; *see Epps v. Clarendon Cnty.*, 304 S.C. 424, 426, 405 S.E.2d 386, 387 (1991) (declining to extend the public policy exception when the employee has an existing remedy for a discharge that allegedly violates rights other than the right to the employment itself and stating that the appellant claimed an infringement of his constitutional rights to free speech and association, for which he could seek redress in a § 1983 action). Additionally, "[t]he determination of what constitutes public policy is a question of law for the courts to decide." *Barron*, 393 S.C. at 617, 713 S.E.2d at 638 (citation omitted). "It is not a function of the jury to determine questions of law such as what constitutes public policy. Rather, once a public policy is established, the jury would determine the factual question [of] whether the employee's termination was in violation of that public policy." *Id.*

Cnty. Sch. Dist., 365 S.C. 316, 319, 618 S.E.2d 881, 883 (2005) ("An employment contract for an indefinite term is presumptively terminable at will . . . .").

Here, within the wrongful discharge cause of action in the complaint, Cunningham alleged that the County conditioned his continued employment on his agreement to (1) "implement directives of individual council members, including those that violate actions directed by the body itself[;]" (2) commit acts violating "the public policy regarding the respective powers of Administrator and Council[;]" and (3) "commit acts that, upon information and belief, would violate the policy set forth in S.C. Code Ann. § 16-17-560[.]" Section 16-17-560 prohibits discharging a citizen from employment because of political opinions or the exercise of political rights and privileges.

The County argues that Cunningham has never claimed to be an at-will employee, and, therefore, he may not obtain relief based on the law governing at-will employment. We agree with Cunningham that the County should not be permitted to argue that the Master Employment Agreement was unenforceable and then rely on the contract's existence to deflect liability on the wrongful discharge claim. By pleading both a breach of contract cause of action and a wrongful discharge cause of action, Cunningham simply set forth alternative theories of relief due to the parties' dispute over the legality of the contract. Rule 8, SCRCP, allows for such pleading in the alternative: "Relief in the alternative or of several different types may be demanded."[16]

In its brief, the County implies that Cunningham did not properly plead a cause of action for wrongful discharge because he did not allege that he was an at-will employee: "[H]e could have alleged that if the Contract was void, then he was an at-will employee entitled to bring a wrongful discharge claim. Cunningham elected not to do so." The County further states: "Instead he has always maintained that *the terms of the Contract* allow him to maintain both a breach of contract claim and a wrongful discharge claim." (emphasis in Brief of Respondent). The County then quotes a statement made by Cunningham's counsel

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[16] *See also Harper v. Ethridge*, 290 S.C. 112, 118, 348 S.E.2d 374, 377 (Ct. App. 1986), *declined to extend on other grounds by Mendelsohn v. Whitfield*, 312 S.C. 17, 19, 430 S.E.2d 524, 526 (Ct. App. 1993) ("[A] plaintiff may join as alternate claims as many claims, legal or equitable, as he has against the opposing party, even if the claims are inconsistent." (citations omitted)).

during the motions hearing: "'[J]ust because you have a contract doesn't mean you give up the right to sue in court. . . . *It's not alternative causes of action.*'" (emphasis in Brief of Respondent).

We view this statement of Cunningham's counsel as merely a reference to our supreme court's precedent indicating that the existence of an employment contract does not preclude a determination that the employment is terminable at will. *See Cape*, 365 S.C. at 319, 618 S.E.2d at 883 ("An employment contract for an indefinite term is presumptively terminable at will, while a contract for a definite term is presumptively terminable only upon just cause. These are mere presumptions, however, which the parties can alter by express contract provisions."); *Stiles v. Am. Gen. Life Ins. Co.*, 335 S.C. 222, 226, 516 S.E.2d 449, 451 (1999) ("[A]n employee under an at-will contract with a 30 day notice provision may maintain an action for wrongful discharge in violation of public policy . . . .").

Therefore, counsel's statement during the motions hearing did not waive the complaint's assertion of a cause of action for wrongful discharge. Further, Cunningham's complaint adequately expresses a cause of action for wrongful discharge despite the omission of the words "at will." *See* Rule 8, SCRCP ("All pleadings shall be so construed as to do substantial justice to all parties."); *Russell v. City of Columbia*, 305 S.C. 86, 89, 406 S.E.2d 338, 339 (1991) ("[P]leadings in a case should be construed liberally so that substantial justice is done between the parties.").

Based on the foregoing, the circuit court erred in concluding that Cunningham was precluded from asserting a wrongful discharge claim based on the public policy exception to the at-will employment doctrine.

The County also argues that even if Cunningham could invoke the public policy exception to at-will employment, the facts alleged in the complaint would not entitle him to relief. Cunningham responds that the County's sole basis for its summary judgment motion as to the wrongful discharge cause of action was that the public policy exception was unavailable to Cunningham as a matter of law. Cunningham asserts that this ground for summary judgment on the wrongful discharge claim was the only ground litigated and ruled on by the circuit court. Cunningham's assertion is correct.

During the motions hearing, counsel for the County admitted that if the circuit court denied the County's summary judgment motion as to Cunningham's legal

ability to assert the wrongful discharge cause of action, then the parties would have to engage in further discovery. Counsel for both parties represented to the circuit court that they had an agreement to allow discovery on this cause of action if the circuit court denied summary judgment on it.[17] Both counsel further agreed to allow the County the option of submitting another summary judgment motion on the wrongful discharge claim after the completion of discovery.

"Summary judgment is a drastic remedy and must not be granted until the opposing party has had a full and fair opportunity to complete discovery." *Dawkins v. Fields*, 354 S.C. 58, 69, 580 S.E.2d 433, 439 (2003) (citation omitted). Therefore, we reverse the grant of summary judgment on this claim and remand the claim to the circuit court so that the parties may engage in further discovery.

CONCLUSION

Accordingly, we affirm the circuit court's grant of summary judgment to the County as to Cunningham's causes of action for breach of contract and violation of the Payment of Wages Act. We reverse the circuit court's grant of summary judgment to the County as to Cunningham's wrongful discharge cause of action and remand to the circuit court to allow the parties to engage in further discovery.

AFFIRMED IN PART, REVERSED IN PART, AND REMANDED.

HUFF and THOMAS, JJ., concur.

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[17] Two months prior to the hearing, on March 8, 2011, Cunningham's attorney filed a "Rule 56(f) Affidavit of Counsel" stating that further discovery was necessary "regarding the issue of whether Plaintiff was terminated for, among other reasons, refusing to carry out a directive to terminate employees." The affidavit sets forth the agreement of counsel for both parties to delay discovery on the wrongful discharge claim until the contract claim was resolved.